

REMARKS/ARGUMENTS

In response to the Office Action mailed January 6, 2009, Applicant amends his application and requests reconsideration. No claims are added or cancelled so that claims 1-23 remain pending.

Procedural Status of this Patent Application

Although the first page of this Amendment indicates that the Amendment is a response to a final rejection, in fact the finality of the rejection was withdrawn. However, there is substantial confusion in the record which needs to be removed. Moreover, the PAIR still incorrectly indicates that the rejection is final.

The first Office Action for this patent application was mailed April 25, 2008. Claims were rejected as to form and over certain publications. A Response filed October 24, 2008 responded to the formality issues and pointed out that the publications applied in rejecting the claims could not be statutory prior art because their effective publication dates were well after the filing date of the present patent application.

In reply, a second Office Action was mailed January 6, 2009. This Office Action was improperly designated as a final rejection. The basis of the finality of the rejection was that the amendment by the Applicant necessitated the new prior art rejection. Of course, the amendment made in responding to formality issues could not have necessitated the new prior art rejection in the second Office Action. Rather, the new rejection was necessitated because the prior art rejection of the first Office Action was legally deficient.

Applicant's representative telephoned the Examiner on January 8, 2009 requesting withdrawal of the finality of the rejection included the Office Action mailed January 6, 2009. In reply, the Examiner issued an Interview Summary, mailed January 12, 2009, stating that the finality of the rejection of the Office Action mailed January 6 was improper and the Amendment submitted October 24, 2008 would be

entered. Of course, since the first Office Action could not have been a final rejection, entry of the amendments of the Response filed October 24, 2008, was not optional.

Since the Official Records of the U.S. Patent and Trademark Office available on the PAIR do not indicate that the finality of the rejection in the Office Action of January 6, 2009 has been withdrawn, this Reply is designated as an after-final reply. However, the finality of the rejection has been withdrawn so that the Amendment presented here must be entered and the following remarks must be considered in determining the patentability of the further-amended claims.

This Amendment

In this Amendment the claims are amended for clarity. Claim 1 is the sole pending independent claim. The claim is amended by describing the user fee paid by a user as “fixed” rather than “predetermined.” Further, it is explained that that “fixed user fee” pays for products and services during a “fixed-length billing period” rather than a “predetermined” billing period. These amendments are fully supported by the patent application as filed. For example, the fact that the periodic user fee is a fixed amount is described in the patent application as filed at page 2, lines 1 and 11, and page 9, lines 3-5 and 17-19. The description of the billing period as being of a fixed length is supported at least in the passage at page 9, lines 17-19 referring to the payment of a fixed fee on a monthly basis. The amended claims describe the shares paid to providers as respective percentage shares of the user fee, simply for clarity. What is meant is that the shares represent a fraction or a percentage of the total user fee for the particular period. This description is entirely consistent with the patent application as filed, for example, from page 18, line 11 through the end of the specification. The remaining amendments of the dependent claims are merely made to conform to the amendments of the sole independent claim, claim 1.

The Invention

As previously described and as is described in the patent application, the invention pertains to a system in which a subscriber or user pays a fixed user fee for a fixed-length billing period, for example, one month, to gain access to a number of different providers, regardless of the degree of usage made of a particular provider. A single source bundles the providers as if they were one information source. The user may use only a few, a large fraction of, or all of the providers of products and services of the bundled source. Then, to compensate the providers, a calculation is made based upon the relative usage of each of the providers. Based upon that usage determination, in accordance with the claims and the disclosure of the patent application, the user fee is divided into respective percentage shares for each provider whose products and services have been accessed during the billing period. Using this system, both frequently accessed providers and those providers only rarely used can obtain revenue that might not otherwise be available if each provider had to individually merchandize his products and services.

A subsidiary and important feature of the invention is that a program, i.e., software, for implementing the system must be installed and run on each user's network access device.

Further novel features of the invention are described in dependent claims 19-21. These features include eliminating payments to providers whose respective percentage shares are minimal. For example, according to claim 19, the smallest shares are not paid to the providers. With respect to claim 20, the maximum number of providers that receives a payment in each distribution is limited to a specific number. The example provided in the patent application is 50 such providers. If that threshold is employed, then any percentage shares for a 51st and higher provider for a particular fixed-length billing period are simply not made. According to the feature of claim 21, if the respective percentage share falls below a particular percentage of the fixed user fee, then payment is not made. The cutoff is made regardless of the number of providers otherwise qualifying and regardless of the degree of usage. The purpose

of these features is simply to avoid an unmanageable number of payees and/or unduly small payments.

The Prior Art Rejection

Claims 1-23 were rejected as obvious over Justice (Published U.S. Patent Application 2001/0049630). This rejection is respectfully traversed.

Response to Prior Art Rejection

Justice relates to system for subscribing to Internet services and paying for products and services purchased through that access. According to Justice, there is a fixed monthly or periodic access service fee for access to the Internet and there is, in addition, a charge according to the sale price of any goods or services that are purchased. There is no division of the fixed periodic access fee amongst providers. There is no suggestion for such a division and, on that basis alone, Justice cannot suggest the invention as defined by any pending claim.

A review of the portions of Justice cited in the Office Action as supporting the rejection and all of the description of Justice, fails to establish *prima facie* obviousness as to claim 1, and, therefore, as to any of claims 2-23. Justice never describes calculating respective percentage shares of a fixed user fee and distributing those respective percentage shares to providers. The only basis upon which it is asserted that there is such a disclosure in Justice is Figure 1 of that publication. However, there is no indication in that figure, or in the description of that figure, of any division of any fixed amount amongst service providers.

Justice does describe that a user of his system has payments tracked to respective vendors. According to paragraph [0020], a customer requests a purchase of an item from a vendor. This purchase has nothing to do with a fixed periodic user access fee. In fact, in paragraph [0077], Justice differentiates between “the customer’s monthly ISP bill” and payment for particular additional products and services. According to that paragraph, the system described by Justice “mirrors long distance

telephone billing which has been used for decades and is a familiar process to customers.” Further, in pointing out the alleged advantages of his system, at paragraphs [0082] and [0083], Justice describes the aggregation of a consumer’s purchases and the provision of a monthly summary of the additional purchases, over the basic monthly access fee, “just like a telephone bill.”

What Justice describes has no relationship to dividing a fixed monthly fee amongst numerous providers based upon usage of the providers’ produces and services. The Office Action acknowledges that Justice does not expressly show calculating a payment distribution by dividing a user fee. Of course, the reason Justice does not expressly describe such a distribution is that Justice does not contemplate such a percentage distribution of a fixed monthly fee. The assertion at the end of page 2 of the Office Action to the contrary is not supported by any part of the disclosure of Justice.

Allegedly, the assertion that Justice describes a percentage distribution is supported by paragraph [0089] of Justice. The cited paragraph, referring to two specific Internet service, provides states that the “providers are paid for the timed usage of their content by the premium services which subsequently charge their users *by the hour*.” This passage does not describe the division of a fixed periodic user access fee amongst providers. Rather, what is described is the payment of additional fees for premium services on top of monthly user access fees, which is the antithesis of the invention. In the invention premium and non-premium services are bundled so that the user can have access to as many of the bundled providers as he chooses. The providers of those products and services will not receive a payment based upon the what the premium providers charge by the hour. The providers will receive a payment that is a percentage of a fixed amount paid on a regular, e.g., monthly, basis. Justice, in its paragraph [0089] has been interpreted in a way exactly opposite from its disclosure.

In the invention as defined by claim 1, as already described, software must be installed of the network access device of each user. According to the Office Action at

page 2, Justice describes installing a running a client program on each user's network access device. Paragraph [0020] was cited as allegedly supporting this assertion. However, Applicant respectfully disagrees with the Examiner's position.

Paragraph [0020] of Justice only describes a browser on the user side as a software application. Browsers are essentially universally installed at the user side, i.e., at the user access device, no matter whether the Justice system or the present invention is employed. Further, in paragraph [0020], and other paragraphs of Justice, there is a description of the placing of cookies on the user network access device. However, cookies are not a client program. Moreover, Justice makes clear that no client program is installed on a user network access device. See paragraph [0078] of Justice.

“The MicroTrack method requires no additional software at the consumer level. Most browsers currently used by users of the public computer communications network (like the Internet) have to ability to accept and use cookies as defined above. *Thus, no additional software is needed on the client (purchaser) computer.*” (Emphasis added.)

Because of these two important differences between what is described in Justice and what is claimed in claim 1, *prima facie* obviousness of claim 1, and, therefore, of claims 1-23, cannot be established based upon Justice alone. The acknowledged differences between the claimed invention and Justice, contrary to the Office Action, are not suggested by Justice.

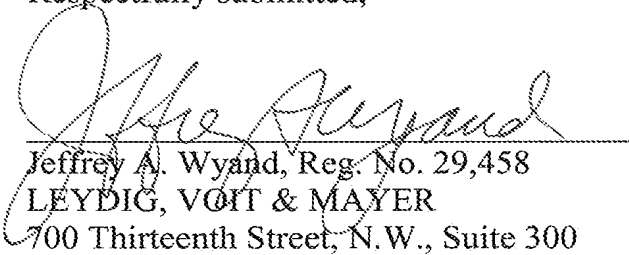
Because of the differences between the invention as defined by claim 1 and Justice, it is not necessary to provide additional explanation and differentiation between any of claims 2-23 and Justice. Nevertheless, Applicant separately traverses the rejection of claims 19-21. Claims 19-21 were not rejected based upon Justice alone. Rather, to supply the parts of those claims acknowledged to be absent from Justice, the Examiner defaulted to “Official Notice.”

Applicant traverses the alleged “Official Notice” taken by the Examiner. The Official Notice presumes that Justice describes the distribution of respective

percentage shares of a fixed user access fee. However, there is no such description in Justice. Further, the Office Notice seems to be based upon individual income taxation in the United States, a system which has no relationship whatsoever to the invention claimed. The graduated income tax rate scheme does not excuse any taxpayers from paying tax on any basis, much less on the basis that percentage shares are not paid out according to claims 19-21. There is no exemption from payment on the basis that a taxpayer's share of the total tax revenue is too small to be of any value and therefore can be neglected. Likewise, Applicants representative is unaware of any tax provision that permits, once a certain number of taxpayers pay tax, that, as apparently analogized to claim 20, the remaining taxpayers need not pay tax. Likewise, attempting to draw an analogy to claim 21, it is not apparent that there is any tax program in which a taxpayer's threshold percentage determines whether the taxpayer must pay tax. The alleged "Official Notice" is simply without any relationship to either Justice or the present invention and, therefore, is erroneous, inappropriate, and should be withdrawn. Claims 19-21 are clearly patentable over Justice, independent of the patentability of claim 1.

Reconsideration, withdrawal of the rejection, and allowance of claims 1-23 are earnestly solicited.

Respectfully submitted,



Jeffrey A. Wyand, Reg. No. 29,458
LEYDIG, VOIT & MAYER
700 Thirteenth Street, N.W., Suite 300
Washington, DC 20005-3960
(202) 737-6770 (telephone)
(202) 737-6776 (facsimile)

Date: May 20, 2009
JAW:ves